

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31001 Introduction. WAC 296-17-31001 through ((296-17-31029)) 296-17-35204 provides rules applicable to workers' compensation insurance coverage (industrial insurance) that employers in the state of Washington must provide for their workers. We refer to these rules (WACs) as sections and the complete body of information as the *workers' compensation underwriting manual*. The workers' compensation underwriting manual contains sections (WACs) that define or explain:

- Words and phrases which we use
- Who the workers' compensation system applies to
- How to obtain workers' compensation coverage
- Why a classification system is necessary
- How our classification plan is designed
- How our classification approach compares to other states
- How we assign classifications to your business
- How we classify your business if a specific classification treatment is not referenced in our classification plan
- How employers report and pay premiums to us
- How we compute base rates
- Audit and recordkeeping requirements
- Experience rating plan
- Base rate tables.

AMENDATORY SECTION (Amending WSR 05-12-031, filed 5/24/05, effective 7/1/05)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of this chapter (*chapter 296-17 WAC*).

The following words or phrases mean:

Account: A unique numerical reference that we assign to you

that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Account manager: An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

Example: *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

All: When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are

considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC ((~~296-17-501~~)) 296-17A-0101 through ((~~296-17-779~~)) 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "*excluding drivers or delivery,*" "*excluding second hand appliance stores,*" or "*excludes construction operations,*" you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

Governing classification: Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.

Includes or including: When a classification contains a descriptive phrase beginning with "includes" or "including" such as "*including clerical office,*" "*including meter readers,*" or "*includes new construction or extension of lines,*" you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related

classifications must be reviewed to determine if the business or industry is specified in another classification.

Example: You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.

Or: Refer to the definition of the word "and."

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (Title 19 RCW) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of an "account manager."

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (Title 51 RCW) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-31011 Classification system and plan. (1) What is a workers' compensation classification system?

A workers' compensation classification system is an objective method of collecting money (premiums) to pay the benefits of workers injured on the job. We believe the method used to spread

this cost among the employers we insure should be fair and have some relationship to their hazard and potential for loss. Classifications are the tool used to achieve a fair method of distributing the risk among employers we insure. Objective boundaries are established for each classification. These boundaries describe the types of businesses which are included in the classification, as well as the operations and employments routinely encountered. We refer to these objective boundaries as the scope of the classification. Once these boundaries have been defined, we can begin collecting information about the employers assigned to each classification. The information includes the exposure which is being covered (*risk*) and the losses (*claims*) which are related to these businesses. Next, we use this information to establish premium rates that employers in each industry will pay for their workers' compensation insurance. Our goal is to produce fair insurance rates which reflect the hazardous nature of each industry. We have tailored our classification system in Washington to reflect industries found in our state. This makes our system responsive to change and provides rate payer equity to the employers we insure. Employers engaged in more hazardous industries such as logging will pay higher insurance rates than employers engaged in less hazardous businesses such as retail store operations.

(2) Why is a classification system needed?

We need a classification system to provide fair premium rates. Washington law (RCW 51.16.035) also requires us to have a classification system.

(3) Is the classification system the same as the classification plan?

No, we refer to the body of rules (WACs) which establish the general parameters of how classifications are to be used as the "classification system." These rules speak to the requirements of workers' compensation insurance and to our general classification approach, such as classifying by nature of business in the state of Washington, not by occupation of worker. The "classification plan" refers to all of the various classification descriptions which describe different types of business or industry. The classification system rules (*general rules*) will apply to all businesses unless another treatment is specifically provided for in the classification plan rules (*special rules*).

(4) How is our classification plan designed?

We have designed a plan which is keyed to the nature of the businesses or industries of the employers we insure. Our plan has over three hundred business or industry classifications. Each classification carries a premium rate which reflects the hazards that workers are exposed to. Descriptions of our classifications can be found in WAC ((~~296-17-501~~)) 296-17A-0101 through ((~~296-17-779~~)) 296-17A-7400.

(5) Is your classification approach similar to the approach used by private insurance companies?

Yes, we are required by law (RCW 51.16.035) to use the same classification (*underwriting*) approach used by private carriers.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

WAC 296-17-31013 Building construction. (1) Does this same classification approach apply to building and construction contractors?

Yes, but it may not appear that way without further explanation. We classify contractors by phase and type of construction since it is common for each contract to vary in scope.

Example: A contractor who builds and remodels private residences may frame the structure and work on no other phases of the project. On another job the same contractor may do only the interior finish carpentry. On still another job the contractor may install a wood deck or build a garden arbor. Each of these carpentry activities is covered by a different classification code. To ensure that contractor businesses receive the same treatment as other businesses, we assign classifications according to the phases and types of construction they contract to perform. Since some contractors specialize in one area of construction, such as plumbing, roofing, insulation, or electrical services, this classification approach mirrors that of nonbuilding contractor businesses. The policy of assigning several basic classifications to contractors engaged in multiple phases of construction may seem to be in conflict with the classification approach used for nonbuilding contractor businesses, but we have simply used the **multiple business** classification approach.

If we have assigned multiple classifications to your construction business you should take special care in maintaining the records required in the auditing and recordkeeping section of this manual. If we discover that you have failed to keep the required records we will assign all worker hours for which the records were not maintained to the highest rated classification applicable to the work that was performed.

(2) Who does this rule apply to?

If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business, this rule applies to you: 0101, 0103, 0104, 0105, 0107, 0108, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0540, 0541, 0550, 0551, 0601, 0602, 0603, 0607, 0608, and 0701.

(3) Can I have a single classification assigned to my business to cover a specific construction project?

Yes, to simplify recordkeeping and reporting requirements we will assign a single classification to cover an entire project.

(4) How do I request the single classification for one of my construction projects?

You should send your request to the attention of your account manager at the address below:

Department of Labor and Industries
P.O. Box 44144
Olympia, Washington 98504-4144

(5) If I have asked for a single classification on one of my construction projects, how do you determine which classification will apply?

You must supply us with a description of the project and a break down of the total number of hours of exposure by phase of construction that you are responsible for.

Example: You notify us that your company will be responsible for all plumbing and iron erection work on a commercial building site. You have requested a single classification for this project. In your request you tell us that you estimate that it will take one thousand work hours to perform all the plumbing work and five hundred work hours to do the steel erection work.

With this information we will estimate the premiums by classification.

Example: We determine that the plumbing work is covered under classification 0306 and the steel erection work is covered under classification 0518. Assume that classification 0306 has an hourly premium rate of \$1.50 and classification 0518 has an hourly premium rate of \$2.55. We estimate the total premium on this job to be \$2,775 (1,000 hours x \$1.50 = \$1,500 + 500 hours x \$2.55 = \$1,275).

Our next step in this process is to develop an average hourly rate for the project. We will use this information to select the single classification which will apply to this project.

Example: We will take the estimated premium (\$2,775) and divide this number by the estimated hours (1,500) and arrive at an average hourly rate of \$1.85.

To select the single classification that will apply to a construction project, we will compare the average hourly rate that we have computed to the rates of the classifications applicable to the project. We will select the classification whose hourly rate is the closest to the average hourly rate that we computed from the information you supplied us with.

Example: From the information you supplied, we have determined that the average hourly rate for this project is \$1.85. We also know that the rate for the plumbing classification (0306) is \$1.50 per hour and the rate for steel erection is \$2.55 per hour. We would assign classification 0306 as the single classification applicable to this project.

(6) How will I know what classification will apply to my construction project?

We will send you a written notice which will specify the basic classification and premium rate that will apply to this project.

(7) If I have asked for a single classification to cover one of my construction projects, am I required to use the single classification which you gave me?

No, but you should call your account manager to verify what other classifications would apply to the project. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(8) I am a general construction or erection contractor, I subcontract all my work and have no employees of my own. Do I have to report to the department of labor and industries?

No, since you do not have employees, you do not need to report to the department of labor and industries. You should be aware that the workers' compensation insurance laws of Washington include certain independent contractors as workers. If we determine that an independent contractor that you used qualifies as a covered worker, you will be responsible for the premium due for their work time. You can also be held responsible for premiums due to labor and industries if you subcontract with an unregistered contractor and they fail to pay premiums on behalf of their employees. It is in your best interest to make sure that your subcontractors are registered contractors in good standing by confirming their status on the department's web site or contacting your account manager.

(9) Am I required to keep any special records of subcontractors that I use?

Yes, you are required to keep certain information about the subcontractors that you use. The information required is:

- Subcontractor's legal name;
- Contractor registration number and expiration date;
- UBI number (or labor and industries account ID number).

If you supply materials to a subcontractor, also keep a record of the:

- Amount of material supplied;
- Project name or location;
- Date material was supplied; and
- Completion date of contracted work.

Failure to maintain these records may result in the subcontractor being considered a covered worker for whom you must report hours.

(10) What classification should I use to report construction site cleanup by my employees? You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame

dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction."

(11) **I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site cleanup in?** If your employees are collecting and/or removing construction site debris, you would report in classification 4305-22. If your employees are collecting and/or removing nonconstruction debris such as household junk, garden waste, basement debris, furniture and appliances, you would also report in classification 4305-22. If you have contracts to clean up construction debris and also provide preoccupancy clean up work and are not a construction contractor, then you can divide hours between the two risk classifications 4305-22 and 6602-03 providing accurate accounting records are kept for both activities.

(12) **What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site?** We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects onto buildings or structures are to be reported separately in classification 6803.

(13) **Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site?** Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and overspray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning, we will allow you to report their work time in classification 6602 "janitors."

(14) **If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup, can I divide their work time between the janitor and a construction classification?** No, we will not permit you to divide the work time of an employee between the janitor classification and a

construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must report all of their work time in the applicable construction or nonshop classification.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

WAC 296-17-31018 Exception classifications. (1) What are exception classifications?

In WAC 296-17-31012 we discussed our classification policy. We described the process used to classify risk and stated that we assign the basic classification or basic classifications that best describe the nature of your company's business. While this policy is modeled after the policy used by private insurance carriers and is geared to administrative ease for you, we recognize that there are some duties or operations where your employees do not share the same general workplace hazards that your other employees are exposed to. To provide for those operations that are outside the scope of a basic classification, we have created three types of exception classifications listed below:

- Standard exception classifications,
- Special exception classifications, and
- General exclusion classifications.

(2) What are the standard exception classifications?

Standard exception classifications cover those employments that are administrative in nature and common to many industries. Employees covered by a standard exception classification cannot be exposed to any operative hazard of the business. If the language of the basic classification assigned to your business does not include these employments, you may be able to report them separately. The standard exception classifications are:

- Classification 4904 (WAC ((~~296-17-653~~)) 296-17A-4904) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (WAC ((~~296-17-696~~), ~~6302~~ (~~WAC 296-17-697~~)) 296-17A-6301), and 6303 (WAC ((~~296-17-698~~)) 296-17A-6303) includes outside sales personnel and messengers.
- Classification 7101 (WAC ((~~296-17-754~~)) 296-17A-7101) applies to corporate officers who have elected optional coverage. A corporate officer as used in these rules is a person who is an officer in the corporation, such as the president, who also serves on the corporation's board of directors and owns stock in the corporation.
- Classification 7100 (WAC ((~~296-17-75306~~)) 296-17A-7100) applies to members of a limited liability company who have

elected optional coverage.

Clerical office employees are defined as employees whose duties are limited to: Answering telephones; handling correspondence; creating or maintaining financial, employment, personnel, or payroll records; composing informational material on a computer; creating or maintaining computer software; and technical drafting. Their work must be performed in a clerical office which is restricted to:

- A work area which is physically separated by walls, partitions, or other physical barriers, from all other work areas of the employer, and
- Where only clerical office work as described in this rule is performed.

A clerical office does not include any work area where inventory is located, where products are displayed for sale, or area where the customer brings products for payment. Clerical office employees can perform cashiering and telephone sales work if they do not provide any retail or wholesale customer service that involves handling, showing, demonstrating, or delivering any product sold by the employer. Clerical office employees can make bank deposits, pick up and deliver mail at the post office, or purchase office supplies, if their primary work duties are clerical office duties as defined in this rule.

Sales personnel are defined as employees whose duties are limited to: Soliciting new customers by telephone or in person; servicing existing customer accounts; showing, selling, or explaining products or services; completing correspondence; placing orders; performing public relations duties; and estimating. Although some of sales person's duties may be performed in a clerical office, most of their work is conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "outside sales." Sales personnel whose duties include customer service activities such as, but not limited to, the delivery of product, stocking shelves, handling inventory, or otherwise merchandising products sold to retail or wholesale customers are excluded from all standard exception classifications. Sales personnel with duties such as delivery and stocking of shelves are to be reported in the basic classification applicable to the business unless the basic classification assigned to the business requires another treatment.

Messengers are defined as employees whose duties are delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business. Classification 6303 "messengers" does not include delivering mail or packages to the employer's customer or as a service to the public. If a messenger is engaged in delivering mail or packages as a service to the public they are to be assigned to the basic classification of the business or classification 1101 as applicable.

Corporate officers duties in classification 7101 must be limited to: Clerical duties; outside sales duties as described

above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. To qualify for this classification, a corporate officer must:

- Be a shareholder in the corporation,
- Be elected as a corporate officer and empowered in accordance with the articles of incorporation or bylaws of the corporation,
- Serve on the corporation's board of directors,
- Not have any exposure to any operative hazard of the business, and
- Not directly supervise employees who have any exposure to any operative hazard of the business.

Members of a limited liability company (LLC) duties in classification 7100 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. This includes only those members who have duties and authority similar to the exemption criteria of corporate officers in RCW 51.12.020.

Classification 6303 may apply to a corporate officer or member of a limited liability company whose duties are limited to outside sales activities as described in the sales personnel section of this rule. Under no circumstance is classification 4904 to be assigned to any corporate officer or member of a limited liability company. You cannot divide the work hours of an employee between a standard exception classification and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to the work being performed.

(3) **What are the special exception classifications?**

Special exception classifications represent operations found within an employer's business that are allowed to be reported separately when certain conditions are met. Assuming the conditions noted under each exception below have been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees." These special exceptions are subject to a division of worker hours in connection with all other basic classifications unless specifically prohibited in an individual classification WAC rule.

Security guards - classification 6601 (WAC ((~~296-17-723~~)) 296-17A-6601) will apply if the security guard:

- Is an employee of an employer engaged in logging or construction,
- Is for the purpose of guarding the employer's logging or construction sites,
- Is employed at the site only during the hours the employer is not conducting any other operations at the site,
- Has no other duties during their work shift as a security

guard.

If all of the above conditions are not met, the security guard is to be reported in the basic classification applicable to the construction or logging operation being conducted.

Janitors - classification 6602 (WAC ((~~296-17-724~~)) 296-17A-6602) will apply if:

- The janitorial/cleaning activities being performed are limited to the employer's clerical office,
- The clerical office meets the criteria described earlier in this rule, and
- The employer's office employment is assigned to be reported in classification 4904.

Construction: Superintendent or project manager - classification 4900 (WAC ((~~296-17-64999~~)) 296-17A-4900) will apply if the superintendent or project manager:

- Is an employee of a licensed contractor engaged in construction,
- Has no direct control over work crews,
- Performs no construction labor at the construction site or project location.

If all of the conditions are not met, the superintendent or project manager is to be reported in the basic classification applicable to the construction project.

Construction: Estimator - classification 4911 (WAC ((~~296-17-65802~~)) 296-17A-4911) will apply if the estimator:

- Is the employee of a licensed contractor engaged in construction, and
- Has no duties other than estimating during their work shift.

If these conditions are not met, the estimator is to be reported in the basic classification applicable to their employer's business or the construction project.

Log truck drivers - classification 5003 (WAC ((~~296-17-66001~~)) 296-17A-5003) will apply if the log truck driver has no other duties during their work shift that are subject to the logging classification 5001 (WAC ((~~296-17-659~~)) 296-17A-5001).

(4) **What are the general exclusion classifications?**

General exclusion classifications represent operations that are so exceptional or unusual that they are excluded from the scope of all basic classifications. If you have these operations, we will assign a separate classification to cover them. You must keep accurate records of the work hours your employees work in these classifications. If you do not keep accurate time records for each employee performing work covered by a general exclusion classification, we will assign the work hours in question to the highest rated classification applicable to those hours. The general exclusion classifications are:

- Aircraft operations: All operations of the flying crew.
- Racing operations: All operations of the drivers and pit crews.
- Diving operations: All operations of diving personnel and ship tenders who assist in diving operations.
- New construction or alterations of the business premises.

- Musicians and entertainers.

A division of work time is permitted between a standard exception classification and flight crew operations, racing operations, or diving operations. If you fail to keep original time records that clearly show the time spent in the office or in sales work, we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

Example: Assume a corporate officer performs duties which are described in classification 7101. Occasionally, the officer flies a plane to attend a meeting. You would report the flying exposure (hours) of the corporate officer in classification 6803. The remainder of the corporate officer's time would continue to be reported in classification 7101.

AMENDATORY SECTION (Amending Order 85-7, filed 2/28/85, effective 4/1/85)

WAC 296-17-352 Audits. An audit of the employer's books, records and payrolls performed pursuant to the authority contained in RCW 51.48.040 may include but will not be limited to:

(1) An audit to determine whether an employer engaged in a business or trade has employment subject to the industrial insurance laws.

(2) A visual inspection of the employer's workplace or places for the purpose of determining appropriate classifications in accordance with the industrial insurance laws and rules as set forth in chapter ((296-17)) 296-17A WAC.

(3) Audits containing a complete and detailed examination of the employer's books and records for a specific period to establish the reporting of the employer's payroll in accordance with the industrial insurance laws and the rules as set forth in chapter 296-17 WAC, and as well, chapter 296-15 WAC in the event the employer has been certified a self-insurer.

Except as otherwise provided in this rule any audit time period may be less than, but will not exceed, three years of the due dates of any payments from any employer where the department has requested submission of the employer's books, or three years of the due dates of any payments where the employer makes claim for adjustment, recomputation or alteration of any such payment: Provided, That an employer certified to self-insure pursuant to the authority contained in chapter 51.14 RCW, shall be subject to such audit as deemed necessary to guarantee its compliance with the industrial insurance laws and rules and regulations for self-insurers: Provided further, That an employer who fails to make any books and records, or certified copies thereof, available for audit in the state of Washington, will be charged for all costs incurred by the department in auditing any books and records maintained at

other places: Provided further, That in any instance where fraud may be indicated with respect to underpayment or nonpayment of premiums the audit time period may be extended beyond that previously set forth.

AMENDATORY SECTION (Amending WSR 06-23-127, filed 11/21/06, effective 1/1/07)

WAC 296-17-35203 Special reporting instruction. (1)
Professional and semiprofessional athletic teams. Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120 (6).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this

state.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours

worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services--Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest,

range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and (~~cancelled~~) canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account

number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8

P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) **Logging and/or tree thinning--Mechanized operations--Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC ((~~296-17-66003~~)) 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) **Special drywall industry rule.**

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) **I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on

the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owners hours} \div (\text{owners hours} + \text{workers hours}) = \\ \text{\% of owner discount.}$$

$$\text{\% of owner discount} \times (\text{total footage of job} - \text{subcontracted} \\ \text{footage, if any}) = \text{Total owner deduction of footage.}$$

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) **Can I be disqualified from using the discounted rates?**

Yes. You can be disqualified from using the discounted rates for three years if you:

- (i) Do not file all reports, including supplemental reports, when due;
- (ii) Do not pay premiums on time;
- (iii) Underreport the amount of premium due; or
- (iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) **If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) **Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not

include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44161, Olympia, Washington, 98504.

NEW SECTION

WAC 296-17-86505 2007 Alternative claim-free experience modification calculation. The following experience modification factor calculation is similar to the experience rating calculation used in 2006 for employers with no compensable accident during the experience period. The experience modification factor shall be calculated the same way as WAC 296-17-860 with the following exceptions:

(1) In WAC 296-17-885, the Expected Loss Rate and Primary Ratio Table IIIA shall be used instead of Table III.

(2) The Maximum Experience Modification Table IVA in WAC 296-17-891 shall be used instead of Table IV in WAC 296-17-890.

NEW SECTION

WAC 296-17-86507 2007 Claim-free experience modification phase-in limitation. For calendar year 2007, if the experience modification factor using WAC 296-17-860 is greater than 100% of the experience modification factor using WAC 296-17-86505, then the experience modification factor shall be limited to 100% of the factor using WAC 296-17-86505.

AMENDATORY SECTION (Amending WSR 05-23-161, filed 11/22/05, effective 1/1/06)

WAC 296-17-870 Evaluation of actual losses. Except as provided in the following subsections of this paragraph, actual losses shall include all payments as of the "valuation date" for each claim arising from an accident occurring during the experience period. Losses for claims open as of the valuation date may also include a reserve for future payments. Actual losses on claims for accidents occurring outside of the experience period shall not be included.

(1) **Valuation date.** The valuation date shall be on and include December 31, one year and one day immediately preceding the effective date of premium rates as set forth in WAC 296-17-895. For experience modifications effective January 1, 1990, and thereafter, the valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

(2) **Retroactive adjustments - revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

(a) In cases where loss values are included or excluded through mistake other than error of judgment.

(b) In cases where a third party recovery is made, subject to subsection (4)(a) of this section.

(c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.

(d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).

(e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the

claim status was changed.

(3) **Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

(4) **Third-party recovery - effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) Definitions:

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

(5) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

(6) **Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," for the purpose of experience rating, will be the date the disability was diagnosed and that gave rise to the filing of a

claim for benefits. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

(7) **Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

(8) **Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

(9) **Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

(10) **Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-010.

(11) **Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC ((~~296-17-7660~~)) 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

NEW SECTION

WAC 296-17-891 Table IV-A.

**Alternate "old" 2007 method
Maximum experience modifications
for firms with no compensable accidents:
Effective 1/1/2007 to 12/31/2007**

Expected Loss Range			Maximum Experience Modification
1	-	2,995	0.90
2,996	-	3,644	0.89
3,645	-	4,322	0.88
4,323	-	5,031	0.87
5,032	-	5,777	0.86
5,778	-	6,558	0.85
6,559	-	7,381	0.84
7,382	-	8,246	0.83
8,247	-	9,157	0.82
9,158	-	10,120	0.81
10,121	-	11,137	0.80
11,138	-	12,214	0.79
12,215	-	13,355	0.78
13,356	-	14,569	0.77
14,570	-	15,860	0.76
15,861	-	17,237	0.75
17,238	-	18,708	0.74
18,709	-	20,285	0.73
20,286	-	21,977	0.72
21,978	-	23,799	0.71
23,800	-	25,767	0.70
25,768	-	27,898	0.69
27,899	-	30,213	0.68
30,214	-	32,738	0.67
32,739	-	35,502	0.66
35,503	-	38,542	0.65
38,543	-	41,900	0.64
41,901	-	45,629	0.63
45,630	-	49,793	0.62
49,794	-	54,476	0.61
54,477	& Higher		0.60

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective January 1, 2007		
Class	Accident Fund	Medical Aid Fund
0101	1.5102	0.7102
0103	1.9285	0.9063
0104	1.0954	0.5189
0105	1.4873	0.8554
0107	1.4779	0.6467
0108	1.0954	0.5189
0112	0.8855	0.4502
0201	2.9771	1.1228
0202	3.5865	1.7260
0210	1.4481	0.5946
0212	1.5741	0.6908
0214	1.5723	0.6391
0217	1.2903	0.6064
0219	1.0310	0.5979
0301	0.6338	0.4127
0302	2.4031	0.8991
0303	2.2735	0.8789
0306	1.2097	0.5013
0307	1.0909	0.5375
0308	0.5462	0.3967
0403	1.8151	1.0914
0502	1.8533	0.7421
0504	1.6756	0.8618
0507	3.1395	1.7331
0508	2.4004	0.8899
0509	1.9140	0.7798
0510	1.6923	0.9163
0511	1.9177	0.8731
0512	1.8329	0.7927
0513	0.9923	0.4630
0514	2.1735	1.0436
0516	1.8907	0.8933
0517	1.9313	1.0352
0518	1.9005	0.8052
0519	2.6218	1.1503
0521	0.6073	0.3376

Class	Accident Fund	Medical Aid Fund
0601	0.7416	0.3729
0602	0.9248	0.4189
0603	1.2551	0.4830
0604	1.0086	0.6823
0606	0.5608	0.3679
0607	0.5428	0.3239
0608	0.4330	0.2432
0701	2.7040	0.7317
0803	0.4986	0.3150
0901	1.9005	0.8052
1002	1.0349	0.6322
1003	0.8552	0.5082
1004	0.5814	0.3011
1005	9.6730	4.4009
1007	0.4244	0.2189
1101	0.7541	0.4688
1102	1.5286	0.7283
1103	1.3045	0.7863
1104	0.5311	0.4052
1105	1.0005	0.5747
1106	0.3267	0.2807
1108	0.6894	0.4434
1109	1.5396	0.9942
1301	0.7669	0.3602
1303	0.2400	0.1527
1304	0.0296	0.0192
1305	0.4356	0.2806
1401	0.4876	0.3476
1404	0.7669	0.5189
1405	0.6008	0.3976
1407	0.6165	0.4427
1501	0.6346	0.3723
1507	0.5820	0.3399
1701	1.0239	0.5509
1702	2.5949	0.9691
1703	1.1204	0.3557
1704	1.0239	0.5509
1801	0.5826	0.3513
1802	0.8068	0.4272
2002	0.7386	0.5182
2004	1.0135	0.6728
2007	0.4854	0.3184
2008	0.3401	0.2179
2009	0.3930	0.3170

Class	Accident Fund	Medical Aid Fund
2101	0.7007	0.4712
2102	0.5642	0.4120
2104	0.3307	0.2965
2105	0.6213	0.4048
2106	0.4365	0.3199
2201	0.2530	0.1745
2202	0.7733	0.4742
2203	0.4765	0.3581
2204	0.2530	0.1745
2401	0.5360	0.3290
2903	0.6629	0.4833
2904	0.7700	0.5325
2905	0.5443	0.4428
2906	0.3483	0.2395
2907	0.5409	0.3986
2908	1.1619	0.6262
2909	0.3916	0.2927
3101	1.0863	0.5612
3102	0.2872	0.1983
3103	0.6003	0.3802
3104	0.6744	0.3701
3105	0.7886	0.5375
3303	0.4653	0.3088
3304	0.4574	0.3817
3309	0.4556	0.3036
3402	0.5828	0.3664
3403	0.2137	0.1418
3404	0.5027	0.3517
3405	0.3434	0.2232
3406	0.1960	0.1695
3407	0.7729	0.4525
3408	0.1880	0.1246
3409	0.1663	0.1403
3410	0.2803	0.2240
3411	0.5284	0.3058
3412	0.6816	0.3328
3414	0.6261	0.3601
3415	0.8773	0.5152
3501	1.1294	0.7094
3503	0.2759	0.2748
3506	1.3792	0.5391
3509	0.3980	0.3263
3510	0.3848	0.2760
3511	0.7602	0.5032

Class	Accident Fund	Medical Aid Fund
3512	0.3360	0.2880
3513	0.4523	0.3564
3602	0.1286	0.0963
3603	0.4908	0.3451
3604	0.8076	0.6067
3605	0.5803	0.3382
3701	0.2872	0.1983
3702	0.4833	0.3360
3708	0.7128	0.4106
3802	0.1954	0.1415
3808	0.4773	0.2627
3901	0.1540	0.1481
3902	0.5034	0.3777
3903	1.0439	0.8858
3905	0.1447	0.1398
3906	0.4803	0.3556
3909	0.2474	0.2162
4002	1.6280	0.7618
4101	0.3183	0.2031
4103	0.4048	0.3771
4107	0.1686	0.1219
4108	0.1487	0.1119
4109	0.2210	0.1513
4201	0.8230	0.3679
4301	0.6687	0.5001
4302	0.6992	0.4650
4304	1.0132	0.7360
4305	1.4391	0.6544
4401	0.4070	0.2945
4402	0.8309	0.6355
4404	0.5665	0.4215
4501	0.1849	0.1590
4502	0.0399	0.0354
4504	0.1011	0.1050
4601	0.7733	0.5186
4802	0.2979	0.2248
4803	0.2438	0.2354
4804	0.5360	0.3861
4805	0.2812	0.2436
4806	0.0566	0.0450
4808	0.4945	0.3441
4809	0.3766	0.3045
4810	0.1332	0.1225
4811	0.2506	0.2279

Class	Accident Fund	Medical Aid Fund
4812	0.3967	0.3054
4813	0.1493	0.1295
4900	0.3884	0.1773
4901	0.0867	0.0511
4902	0.1098	0.0738
4903	0.1675	0.1054
4904	0.0304	0.0237
4905	0.3208	0.2955
4906	0.0986	0.0692
4907	0.0513	0.0399
4908	0.0799	0.1152
4909	0.0381	0.0622
4910	0.4829	0.3235
4911	0.0697	0.0500
5001	6.0252	2.4999
5002	0.6557	0.3944
5003	2.3613	0.9947
5004	0.9584	0.6259
5005	0.6550	0.3265
5006	1.9073	0.8254
5101	0.9648	0.6286
5103	0.7356	0.5874
5106	0.7356	0.5874
5108	0.9177	0.6739
5109	0.6542	0.3966
5201	0.4666	0.2945
5204	0.9946	0.6060
5206	0.4708	0.2584
5207	0.1551	0.1536
5208	0.8852	0.5790
5209	0.8151	0.4940
5300	0.1098	0.0738
5301	0.0330	0.0267
5302	0.0207	0.0154
5305	0.0498	0.0464
5306	0.0605	0.0494
5307	0.5858	0.3420
6103	0.0753	0.0755
6104	0.3560	0.2884
6105	0.3714	0.2395
6107	0.1224	0.1320
6108	0.4166	0.3694
6109	0.0980	0.0688
6110	0.6353	0.4328

Class	Accident Fund	Medical Aid Fund
6120	0.2971	0.1916
6121	0.3714	0.2395
6201	0.3576	0.2052
6202	0.6582	0.4908
6203	0.0825	0.1050
6204	0.1219	0.1102
6205	0.2469	0.1932
6206	0.2350	0.1773
6207	0.9090	0.9446
6208	0.2207	0.2133
6209	0.3010	0.2576
6301	0.1529	0.0747
6302	0.1776	0.1483
6303	0.0725	0.0510
6304	0.3757	0.3458
6305	0.0909	0.0884
6306	0.3406	0.2448
6308	0.0669	0.0483
6309	0.1776	0.1483
6402	0.2832	0.2378
6403	0.1593	0.1422
6404	0.2184	0.1745
6405	0.6377	0.3937
6406	0.1116	0.0981
6407	0.2793	0.2110
6408	0.4131	0.2828
6409	0.9934	0.5215
6410	0.2946	0.2151
6501	0.1719	0.1293
6502	0.0403	0.0313
6503	0.0902	0.0447
6504	0.3636	0.3535
6505	0.0944	0.0974
6506	0.0994	0.0899
6509	0.3492	0.3076
6510	0.5441	0.2700
6511	0.3269	0.2768
6512	0.2715	0.2105
6601	0.1848	0.1493
6602	0.4685	0.3511
6603	0.3564	0.2275
6604	0.0833	0.0656
6605	0.2779	0.2818
6607	0.1746	0.1260

Class	Accident Fund	Medical Aid Fund
6608	0.6917	0.2648
6620	4.8308	2.9905
6704	0.1754	0.1209
6705	0.6966	0.7926
6706	0.3005	0.2637
6707	3.4221	2.9240
6708	6.9097	7.8371
6709	0.2714	0.2477
6801	0.6708	0.4154
6802	0.4546	0.3395
6803	1.0265	0.4432
6804	0.2946	0.1943
6809	4.7278	4.0617
6901	0.0000	0.0584
6902	1.2857	0.4644
6903	8.6855	3.9709
6904	0.4799	0.2432
6905	0.4281	0.2567
6906	0.0000	0.2567
6907	1.3109	0.8611
6908	0.4925	0.3340
6909	0.1169	0.0963
7100	0.0327	0.0243
7101	0.0255	0.0175
7102	3.0801	4.2970
7103	0.6772	0.3641
7104	0.0310	0.0234
7105	0.0316	0.0254
7106	0.1887	0.1614
7107	0.2015	0.1987
7108	0.1703	0.1730
7109	0.1259	0.1085
7110	0.3871	0.2062
7111	0.4265	0.2329
7112	0.6466	0.4776
7113	0.3368	0.3040
7114	0.5211	0.4502
7115	0.5380	0.4693
7116	0.6929	0.5136
7117	1.5938	1.2207
7118	1.3242	1.0182
7119	1.3808	0.9103
7120	6.4082	4.2401
7121	5.9556	3.9464

Class	Accident Fund	Medical Aid Fund
7122	0.5236	0.4754
7200	1.2338	0.6227
7201	1.5423	0.7784
7202	0.0414	0.0226
7203	0.1053	0.1217
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.5041	0.3715
7302	0.9770	0.7401
7307	0.4868	0.3880
7308	0.2678	0.2871
7309	0.2410	0.2315
7400	1.5423	0.7784

For work performed during the period July 1, 2007, through December 31, 2007, ~~((and reported and paid in full to the department no later than April 30, 2008,))~~ employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

Base Rates in Dollars Per Sq. Ft. of Wallboard Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0540	0.0268	0.0111	0.0005

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0541	0.0161	0.0062	0.0005
0550	0.0375	0.0124	0.0005
0551	0.0218	0.0073	0.0005

For work performed during the period July 1, 2007, through December 31, 2007, ~~((and reported and paid in full to the department no later than April 30, 2008,))~~ employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Base Rates Per License Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
6614	44((*))	35((*))	1((*))
6615	309((*))	270((*))	1((*))
6616	14((*))	10((*))	1((*))
6617	103((*))	76((*))	1((*))
6618	99((*))	50((*))	1((*))

Base Rates Per Twelve Horse Stalls

Effective January 1, 2007

6622	565((**))	449((**))	1((**))
6623	207((**))	147((**))	1((**))

((*)) These rates are calculated on a per license basis for parimutuel race tracks and are base rated.

((**)) These rates are calculated on a per 12 horse stalls for parimutuel race tracks and are base rated.